GUNASINGAM RAMASINGAM

v.

UNITED MALAYAN BANKING CORPORATION & ANOTHER APPEAL

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NOS: W-08-226-1997 & W-08-184-1997]
19 JUNE 2001

CIVIL PROCEDURE: *Appeal - Leave to appeal - Appeal to Court of Appeal against order of registrar of High Court - Jurisdiction to hear appeal - Delay in filing application for leave - Injustice to opposite party*

These were two separate applications for leave to appeal by the appellant against the respondents respectively. The appellant sought leave to appeal against the order of the registrar where judgment was entered against him. In both applications, the appellant also sought leave to adduce further evidence.

Held:
Per Gopal Sri Ram JCA

[1] The appellant was in essence seeking to appeal against an order from which no appeal lies to this court. This court is only conferred with jurisdiction to hear appeals against orders made by a High Court judge in his original and appellate jurisdiction, subject to restrictions, for example under s. 68 of the Courts of Judicature Act 1964.

[2] Although the motion sought leave to appeal, the appellant in reality sought for an extension of time to appeal. Since the appellant was acting in person, this court was prepared to give him a greater leeway than it would give a solicitor and overlook the elementary errors he had made. Even so, the delay in moving this court for more than two years was considerable. To extend time now would cause much injustice to the respondents.

[Applications dismissed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Kini adalah dua permohonan berasingan untuk kebenaran untuk merayu oleh perayu terhadap responden-responden masing-masing. Perayu meminta kebenaran untuk merayu terhadap perintah pendaftar di mana penghakiman telah dimasukkan terhadapnya.

Diputuskan:
Oleh Gopal Sri Ram HMR

[1] Perayu berusaha untuk merayu terhadap sesuatu perintah yang tidak boleh dirayu di mahkamah ini. Mahkamah kini hanya diberi bidang kuasa untuk mendengar rayuan terhadap perintah-perintah yang dibuat oleh hakim Mahkamah Tinggi dalam bidang kuasa asal dan rayuan, tertakluk kepada pembatasan-pembatasan, misalnya di bawah s. 68 Akta Mahkamah Kehakiman 1964.

[2] Meskipun usul ini berusaha untuk mendapatkan kebenaran untuk merayu, perayu sebenarnya berusaha untuk mendapatkan perlanjutan masa untuk merayu. Oleh kerana perayu bertindak sendiri, mahkamah ini bersedia memberikannya lebih peluang daripada seorang peguam dan tidak akan mengendahkan kesalahan-kesalahan asas yang telah dilakukannya. Namun, kelengahan yang lebih daripada dua tahun adalah terlebih. Maka untuk melanjutkan masa permohonan akan menyebabkan ketidakadilan yang tidak berpatutan kepada responden.

[Permohonan-permohonan ditolak.]

Legislation referred to:
Courts of Judicature Act 1964, s. 68

(Civil Appeal No: W-08-226-1997)
For the appellant - Gunasingam Ramasingam
For the respondent - James Selva; M/s Ong Kok Bin & Co

(Civil Appeal No: W-08-184-1997)
For the appellant - Gunasingam Ramasingam
For the respondent - Aimee Liew; M/s Mah-Kamariah & Partners

Reported by Usha Thiagarajah

JUDGMENT

Gopal Sri Ram JCA:

We heard and dismissed these two separate applications for leave on two consecutive days according to the order in the list of cases. But I think that a single judgment is sufficient to dispose of both of them because of the common issues they both give rise to.

As long ago as 11 December 1990, MBf Finance Berhad ("the finance company") issued a writ, *inter alia*, against the appellant as guarantor to recover the sum of RM338,744.16 and consequential relief. Later, the finance company took out a summons for judgment. That summons was returned before the registrar in chambers on 26 May 1992. The appellant was absent at the hearing of the said summons. Judgment was accordingly entered against him. The appellant then applied to have this judgment set aside. The registrar dismissed that application on 28 September 1992. A further summons was then taken out by the appellant seeking extension of time to lodge an appeal against the registrar's order. That summons came before the judge in chambers and was dismissed on 17 January 1995. On 14 June 1996, the appellant was adjudged a bankrupt. On 17 May 1997, the appellant took out a motion in this court seeking leave to appeal against the order of the registrar dated 26 May 1992. That application was registered as Civil Application No. W-08-184-97. A second application was filed in the same proceedings by the appellant seeking leave to adduce further evidence. We heard both applications and dismissed them on 19 June 2000.

There are two main reasons for the dismissal. Firstly, the appellant is in essence seeking to appeal against an order from which no appeal lies to this court. We are only conferred with jurisdiction to hear appeals against orders made by a High Court judge in his original and appellate jurisdiction. And there are restrictions upon that, for example under s. 68 of the Courts of Judicature Act 1964. Here is an attempt to appeal against the order of the registrar of the High Court. We plainly have no jurisdiction to entertain such an appeal.

Secondly, although the motion seeks leave to appeal, what I think the appellant is really asking for is an extension of time to appeal. Since the appellant is acting in person, I am prepared to give him greater leeway than I would have been prepared to grant a solicitor and overlook the elementary errors he has made. Even so, and taking the order in question as being that of the judge, the delay in moving this court is considerable – more than two years. To extend time now would cause much injustice

to the finance company. The appellant having done nothing over a substantial period of time, the finance company was entitled reasonably to assume that the appellant had decided not to challenge the order of the judge. To permit an extension would therefore destroy that assumption – a legitimate expectation in the finance company that litigation was finally at an end.

After taking into account all relevant considerations, I formed the view that discretion should be exercised against the appellant. My learned sister Siti Norma Yaakob and my learned brother Mokhtar Sidin JJCA were in agreement with my views upon the application. Accordingly, we dismissed the appellant's substantive motion for leave. With the dismissal of that motion, the application to adduce fresh evidence fell as well and was dismissed.

The facts in respect of the second motion are equally straightforward. The respondent to this motion (entered as Civil Application No. W-08-226-970) is the United Malayan Banking Corp. Bhd (the bank). Here the judgment against which the appellant complains was entered on 23 May 1995. The motion for leave before us – I think what the appellant seeks is an extension of time – was only filed on 7 July 1997. The delay is simply horrific. All what I said in respect of the finance company in the earlier application applies with full force to the bank. I found no grounds upon which discretion could be exercised in the appellant's favour. Consequently I came to the conclusion that discretion should be exercised against the appellant. My learned sister Siti Norma Yaakob and my learned brother Mokhtar Sidin JJCA were in agreement with my views upon the application. The motion was therefore dismissed. The application to adduce further evidence fell with it.

All costs in respect of the applications that form the subject matter of this judgment were awarded to the respondents.